IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1023 OF 1994

M/s.A.V. Industries
a Partnership firm registered
under the Indian Partnership
Act and having its work at
5, Satguru Industrial Estate,
R.A. Road, Goregaon (East),
Bombay - 400 063. .. Petitioner.

V/s.

1. Union of India, through
Secretary, Ministry of law
and Justice (Deptt of Legal
Affairs) Aayakar Bhavan,
M.K. Road, Bombay 400 020

2. The Joint Director General
of Foreign Trade, having
his office at New CGO Bldg.,
New Marine Lines, Churchgate
Bombay 400 020.

3. The Assistant Collector of
Customs, Group VII, New
Customs House, Ballard Estate
Bombay 400 038. .. Respondents.

Mr.S.N. Kantawala i/b. M/s.Kantawala & Co. for the petitioner.

Mr.S.M. Shah with Mr.H.V. Mehta for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 4TH MAY, 2005.

ORAL JUDGMENT : (Per V.C. Daga, J.)

1. This petition is challenging the letter dated 13/16th September, 1993 at Exhibit 'H'; whereby it was clarified that as per the sensitive

List at Sr.No.2 Import of Rubber Chemicals CIF value had been restricted upto 7% of FOB value of Exports. Accordingly, value of the licence held by the petitioner may be treated as restricted to 7% of FOB value. The petitioner is also challenging the show cause notice dated 18th October, 1993 at Exhibit ‘G’; whereby the petitioners were called upon to show cause as to why the demand set up against them for short levy to the extent of 13,46,096/- should not be confirmed and why action for recovery thereof should not be initiated under the provisions of the Customs Act, 1962.

FACTUAL MATRIX

2. Factual matrix giving rise to the present petition in nutshell appears to be as under :

3. The petitioner is fully export oriented unit. It manufacturers various types of automobile rubber parts, which are fully exported. The petitioner, as per the Import Policy for past several years, has been recognised as eligible exporters. The petitioner was given advance licences under the scheme popularly known as the ‘DEEC scheme’; allowing import of required raw materials for being used in the final product meant for export in toto which entitled the petitioner to claim benefit of

clearing raw material totally duty free.

4. The petitioner states that the said scheme has been changed from time to time depending upon the statistical data and commercial requirement of the Government of India and accordingly, relevant changes were made from time to time in the Import Policy.

5. The petitioner states that under the Import Policy (AM 1988-91) the raw materials were covered under the Heading ‘Export Products under Appendix 13-C annexed to the said Import Policy for those years’.

6. The petitioner claimed to have approached the Chief Director General of Foreign Trade to allow the petitioner to obtain licence on repeat basis so that the petitioner need not have to go on applying for the licences from time to time since their quantity requirement was static.

7. According to the petitioner, representations made was referred to the Director General of the Technical Development (DGFT), New Delhi. According to the petitioner some time on 28th November, 1989 the Chief Director General of Foreign Trade by his letter informed the petitioner that instructions have been issued to the second respondent for deletion of

input/output norms as far as the petitioner was concerned.

8. According to the petitioner the Director General of Foreign Trade agreed to the request made by the petitioner in import with the result the value restrictions which were put in the licences held by the petitioner were deleted from their licences.

9. The petitioner submitted that acting upon the said deletion effected on 30th November, 1992 the petitioner imported raw material required for its consumption. the petitioners namely; rubber chemicals and filed two bills of entry for clearances. The petitioner further submitted that the value with regard to the said goods covered under the said bills of entry was Rs.15,06,205/- CIF equivalent to US$ 47,822. The petitioner stated that the bills of entry under which the goods were imported were covered under its Import Licence which was bearing No.0307729 dated 7th October, 1992.

10. The petitioner states that after the importation of the goods, they were detained and the clearance were not allowed by third respondent. However, subsequently, the goods were cleared duty free. The petitioners were allowed to utilise the said raw material in their factory and the finished

products manufactured therefrom were exported.

11. The petitioner appears to have been served with the show cause notice issued by the third respondent on 18th October, 1993; wherein the second respondent stated that the petitioner was bound to abide by the value restrictions since as per the Import Policy rubber chemicals being listed in the schedule of sensitive items; there were restrictions on import of goods such as rubber chemicals to the tune of 7% of the FOB value of the exports even though the said value restrictions on the licence held by the petitioner were cancelled.

12. The petitioner sought clarification in this behalf from the Director General of Foreign Trade vide its letter dated 23rd July, 1993. The Office of the Director General of Foreign Trade appears to have clarified vide letter dated 13/16th September, 1993 (Exhibit 'H') that the value restrictions continued to exist as per the Import Policy and, therefore, the petitioner could not have taken advantage of free import of the subject raw material. The petitioner, as stated, has challenged the show cause notice as well as the clarification in this petition filed under Article 226 of the Constitution of India.

13. On being notice, the respondents appeared

and filed their affidavit-in-reply to the petition. The respondents were also given an opportunity to file additional affidavit clarifying as to under what circumstances the value restrictions were removed from the licence held by the petitioner. The respondent has also filed an additional affidavit of Ms.Shubhra, Joint Director General of Foreign Trade. It is specifically stated that the deletion of value restrictions from the licence was an inadvertent lapse on the part of the office of the DGFT, however, the act of import was in breach of Import Policy prevailing at the relevant time.

SUBMISSIONS :

14. The learned counsel appearing for the petitioner submitted that on the basis of the deletion of value restrictions, petitioner made imports. It acted to its own prejudice by importing the raw material believing the representation made by the office of the DGFT that there are no value restrictions so far as the licence held by the petitioner is concerned. Thus, in the submission of the petitioner now, the revenue is estopped from issuing any show cause notice or demanding any duty from the petitioners. Accordingly, he submits that even if it was mistake, since it was acted by the petitioner now the respondents cannot be allowed to

take advantage of their mistake and slap heavy liability against the petitioner.

15. Mr.Shah appearing for the respondents-revenue repeatedly tried to support its show cause notice and submitted that the petitioner should submit its reply and department should be allowed to adjudicate upon the show cause notice. Since this petition is pending past 11 years we thought it fit to examine prima-facie validity of the action impugned. Consequently Mr.Shah was asked as to under what circumstances the value restrictions were removed from the licence held by the petitioner. He was unable to throw any light. This matter was adjourned on more than two occasions to enable Revenue to place necessary materials on record. In spite of grant of sufficient time no material was placed before us except saying that removal of value restriction was inadvertent lapse on the part of the Officer. Even the name of the Officer has not been disclosed. Mr.Shah tried to canvas that there can be no estoppel against law.

CONSIDERATION

16. Having heard rival parties, it is not in dispute that the action of the respondents has made the petitioner to believe that value restriction has

been given goby by the DGFT. The petitioner appears to have acted upon the endorsement made in the licence deleting the value restrictions and made imports. The petitioner has thus acted to its own prejudice. No fault can be found with the imports made by the petitioner relying upon the endorsement made in the licence. The legal submission of Mr.Shah that there cannot be estoppel against law is well recognised. However, when the import is in accordance with the import licence issued to the petitioner, the respondents cannot take shelter under the import policy and purport to take action against the petitioner. It is not the case of the respondents that the deletion of the conditions set out in the licence is due to misreprentation or suppression of material facts on the part of the petitioners. It is not even the case of the revenue that the deletion of the licence condition was carried out by the officers of the department in connivance with the petitioners. Therefore, if the deletion of the condition was a bonafide error or misconstruction of the import policy by the officers of the department the petitioners cannot be made to suffer.

17. In the above view of the matter, we hold that issuance of show cause notice (Annexure ‘G’) is absolutely unjustified. Consequently, we have no

option but to quash and set aside the show cause notice and hold that the petitioner has acted pursuant to the amendment made in the licence resulting in deletion of the value restrictions as such the respondents are not entitle to take impugned action against the petitioner. It is also declared that the clarification given by the DGFT (Exhibit 'H') does not apply to the case of the petitioner qua licence and import involved herein.

18. In this view of the matter, the petition is allowed. Rule is made absolute in terms of this order.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)